IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2833 OF 2005

Rajiv Ram Bhadbhade,)
Aged about 45 years,)
Profession: Doctor,)
residing at Advait,)
Behind Pawar Bungalow,)
Miraj 410 416.) ... Applicant.

Versus.

The State of Maharashtra,)
(at the instance of Miraj)
Police Station in C.R.No.)
64 of 2005).) ... Respondent.

Shri Vijay Tulpule with Shri Harshad Bhadabhade for the Applicant.

Shri Ravi Kadam, Advocate General with Shri K.V.Saste, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 8th & 11th July, 2005.

ORAL JUDMENT.:

1. This is an application for grant of anticipatory bail under section 438 of the Code of Criminal Procedure, 1973. The offence has been registered against the Applicant under section 376, 376(2)(d), and section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the said Act of 1989).

2. The learned Counsel for the Applicant submitted that though offence is registered under the provisions of the said Act of 1989, the bar created by section 18 of the said Act of 1989 will not apply and anticipatory bail can be granted under section 438 of the said Code of 1973. The learned Counsel appearing for the Applicant submitted that the material placed on record shows that much prior to the incident, the Complainant had adopted Christian religion by undergoing necessary conversion ceremony. The learned Counsel for the Applicant submitted that the documents which are produced by the prosecution show that the Complainant had adopted Christian Religion and there is documentary evidence on record to that effect. He submitted that the documents which are referred to in the affidavit filed on behalf of the State have no relevance at all as most of the documents are of the blood relations of the Complainant. He submitted that in view of the clear material available on record to show that the Complainant had adopted Christian Religion, she cannot claim protection of the said Act of 1989. The learned Counsel has placed reliance on various decisions of this Court as well as other High Courts. He placed reliance on the decision of the learned Single Judge of this Court reported in 1995(2) Mah.L.J. page 669 (Ramchandra Govindrao Watkar & anr. v/s. State of Maharashtra). He referred to a decision of the Delhi High Court reported in 2000 All M.R. (Cri) Journal page 41 (Mukesh Kumar Saini v/s.

State). He has invited my attention to a decision of the learned Single Judge of the Karnataka High Court reported in 2002 Cri.L.J. page 518 (Chikkappa & others v/s. State of Karnataka). He also placed reliance on the decision of the Apex Court reported in 2005 SCC (Cri.) page 556 (M.P.Lohia v/s. State of West Bengal & anr.). The learned Counsel lastly submitted that there is no assertion made by the Complainant that the Applicant does not belong to either Scheduled Caste or Schedule Tribe and therefore, offence under the said Act of 1989 is not made out. He submitted that other offences alleged are punishable under the Indian Penal Code and therefore, power under section 438 of the Code of 1973 can be exercised. He submitted that a case is made out for grant of anticipatory bail.

3. The learned Advocate General appearing for the State submitted that on a plain reading of the F.I.R., a case is made out for commission of offence under the said Act of 1989. The learned Advocate General submitted that even assuming that there is record showing that the Complainant got herself converted into Christianity, that does not ipso facto mean that she ceased to be a member of her original caste. In this connection, he placed reliance on the decision of the Apex court reported in AIR 2004 Supreme Court page 1672 (State of Kerala v/s. Chandramohanan) and (2005) 1 SCC page 394 (E.V.Chinnaiah v/s. State of A.P.). The learned

Advocate General also relied upon a decision of the Full Bench of Rajasthan High Court reported in 200 Cri.L.J. page 2899 (Virendra Singh v/s. State of Rajasthan). The learned Advocate General on instructions stated that the investigation is now substantially complete. He submitted that bar of section 18 of the said Act of 1989 will apply and this application is not maintainable.

4. The Complainant who was given notice of this Application was present in the Court personally. Though the Complainant has not engaged services of any Advocate, she has placed on record affidavit dated 6th May 2005. In the said affidavit, she had denied the allegation that she had adopted Christian religion. It is stated in the affidavit that the Church in question is not in existence as it is not registered.

5. I have considered the submissions made by the learned Counsel appearing for the parties. It will be necessary to refer to the decision of the learned Single Judge of this Court in the case of Ramchandra (supra). In paragraph 10 of the said decision, the learned Single Judge held that though a case is registered under the said Act of 1989, yet when prima-facie the accusations made in the First Information Report do not disclose any offence punishable under the said Act of 1989, the jurisdiction of the Court under section 438 is not taken away and the Court should not shirk its responsibility

in examining the First Information Report. The learned Single Judge proceeded to hold:

> "10. However, that does not mean that in a case where because of political rivalry or other considerations, though a case is registered under the Prevention of Atrocities Act, yet prima facie accusation made in the First Information Report does not disclose any offence punishable under the Prevention of Atrocities Act, the jurisdiction of the Court under section 438, Criminal Procedure Code is taken away. The Court should not shirk its responsibility in examining appropriate cases where it is brought to the notice of the Court in an application under section 438, Criminal Procedure Code, that ex facie the accusation discloses no offence having been committed under the Prevention of Atrocities Act. Merely because the case has been so registered by the police under the Prevention of Atrocities Act, an application for grant of anticipatory bail should not be thrown out without finding out whether there are accusations of commission of offence under the Prevention of Atrocities Act or not. It would be really hazardous if the allegations made in the First Information

Report of accusations contained therein do not make out any offence under the Prevention of Atrocities Act, yet to harass a person the police officials register the case under the Prevention of Atrocities Act so that such person may not invoke section 438, Criminal Procedure code as section 18 of the Prevention of Atrocities Act bars invocation of section 438, Criminal Procedure Code for grant of anticipatory bail and the court refuses to entertain such application. Section 18 bars invocation of section 438, Criminal Procedure Code in relation to an offence under the Prevention of Atrocities Act and not simply because a case has been registered against such person under the said Act. **Thus, whenever it is pointed out by an accused/applicant in an offence registered under the Prevention of Atrocities Act to the Court while moving application for pre-arrest bail under section 438, Criminal Procedure Code, that the accusation made in the F.I.R. or allegations contained therein do not constitute any offence under the Prevention of Atrocities Act, it is the duty of the court to examine and judicially scrutinize whether on its face, the First Information Report and the material available in the case**

diary do constitute an offence under the Prevention of Atrocities Act. The correctness of allegations is not required to be gone into and the only thing required to be seen is that the allegations made in the First Information report and available material in the case diary taking to be true on its face, do constitute an offence under the Prevention of Atrocities Act or not. If after judicial scrutiny, the court finds that the First Information Report and the material available in the case diary on its face do not constitute an offence under the Prevention of Atrocities Act, the jurisdiction of the Court, if the case on merits is made out, is not taken away in granting pre-arrest bail under section 438, Criminal Procedure Code, because in that event, it cannot be said that the accusation reveals commission of an offence under the Prevention of Atrocities Act. On the other hand, if the court finds that the First Information Report and the material in the case diary do disclose the offence under the Prevention of Atrocities Act and the accusation ex facie reveals that an offence under the Prevention of Atrocities Act by the accused/applicant has been committed by the

> **accused/applicant, obviously section 18 of the Atrocities Act comes into operation** and the Court ceases to have any jurisdiction to pass any order invoking section 438, Criminal Procedure Code." (Emphasis supplied)

Thus, this Court held that correctness of the allegations made in the F.I.R. cannot be gone into and the only thing which is required to be seen is the allegations made in the F.I.R. and taking the allegations to be true on its face value, the question to be considered is whether the allegations do constitute an offence under the said Act of 1989. Reliance has been placed by the learned Counsel for the Applicant on a decision of the Karnataka High Court in the case of Chikkappa (supra). The relevant portion of the said judgment reads thus:

> "34. On entire consideration of the material allegations in the present case, in my view, in the absence of specific averments in the complaint itself, (a) that the petition accused not belonged to SC or ST; (b) in the absence of any material to show that the intentional insult or intimidation was only with an intent "to humiliate" and (c) such intentional insult or intimidation "to humiliate" was done in a place within public

view, it can be safely held at this stage that there is no material to prima facie hold that the petitions have committed an offence u/s.3(1)(X) of the Act and as such High Court can consider the application u/s.438 Cr.P.C. filed by the petitions in spite of bar u/s. 18 of the Act."

6. As stated earlier, the submission of the learned Counsel for the Applicant is two fold. The first is that due to the conversion, the Complainant does not belong either to the Scheduled Caste or to the Scheduled Tribe and secondly, the Complainant has not stated in the complaint that the Applicant does not belong either to the Scheduled Caste or the Scheduled Tribe. Reliance is placed on certain documents to show that the Complainant got married in accordance with Christian religious rites and record of the concerned Church shows that the Complainant was Christian by religion. It is not in dispute at this stage that the caste of the Complainant by birth will have the protection of the said Act of 1989. Reliance is placed on the subsequent conversion. On this aspect it will be necessary to refer to the decision of the Apex Court in the case of E.V.Chinnaiah (supra). S.B.Sinha J. has said in a separate Judgment thus:

> "93. Scheduled Caste, however, is not a caste in terms of its definition as contained in Article 366(24) of the Constitution. They are brought within the purview of the said category by reason of their abysmal backwardness. Scheduled Caste consists of not only the people who belong to some backward caste but also race or tribe or part of or groups within castes, races, or tribes. They are not merely backward but the backwardmost. **A person even does not ceased to be a Scheduled Caste automatically even on his conversion to another religion.** (see Punit Rai v. Dinesh Chaudhary and State of Kerala v. Chandramohanan.)" (Emphasis supplied)

The Apex Court in the case of State of Kerala v/s. Chandramohan (supra) was dealing with a case where there was a change of religion by a person belonging to a Scheduled Tribe. The Apex Court held that it cannot be said that merely by change of religion person ceases to be a member of the Scheduled Tribe. The question as to whether he ceases to be a member or not must be determined by appropriate Court.

7. Thus, even assuming that the case made out by the Applicant is correct that the Complainant herself

converted herself into Christian religion that by itself will not be a clinching circumstance in the sense that merely by change of religion it cannot be said that the person ceases to be a member of the Scheduled Caste. I am not entering into the larger question whether while deciding an application under section 438 of the said Code enquiry can be made by the Court as regards caste of the Complainant who has alleged commission of offence against him under the provisions of the said Act of 1989. As the matter stands today, the caste of the Complainant by birth does attract provisions of the said Act of 1989. The F.I.R. discloses the said caste of the Complainant. As held by the learned Single Judge of this Court in the case of Ramchandra (supra), the correctness of the allegations made in the F.I.R. cannot be gone into for deciding the applicability of bar created by section 18 of the said Act of 1989. Therefore, in my view, it is not possible to come to a conclusion that the Complainant does not belong to the caste to which she is allegedly claiming and that she has ceased to be a member of the said Caste by reason of conversion.

8. So far as the second contention is concerned, it is true that there is no specific assertion made by the Complainant that the Applicant does not belong to either Scheduled Caste or Scheduled Tribe. However, as pointed out by the learned Advocate General, in the last part of

her complaint there is an indication that the the Applicant does not belong to either Scheduled Caste or Scheduled Tribe. Reading the statement of the Complainant as it is, it is difficult to come to the conclusion that the offence punishable under the said Act of 1989 is not made out. Hence, it is obvious that the bar under section 18 of the said Act of 1989 will apply which means that this the application not maintainable. In the circumstances, I have not examined the merits of the case made out by the Applicant.

9. In view of the above discussion, the Application is rejected. The learned Counsel for the Applicant states that ad-interim relief granted by this Court may be extended for a reasonable period to enable the Applicant to take appropriate steps. Considering the fact that the Applicant has been protected by this Court since 28th April 2005, ad-interim relief granted by this Court will continue to operate for a period of four weeks from today subject to condition that the Applicant will cooperate with the Investigating officer for the purpose of investigation.

10. The parties to act on an authenticated copy of this order.

Judge.